

**IN THE UNITED STATES DISTRICT COURT
FOR SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

COUNTY OF HARRIS, TEXAS,

Plaintiffs,

v.

ELI LILLY AND COMPANY, ET AL.

Defendants.

Civil Action No. 4:19-cv-04994

**AGREED MOTION FOR CONTINUANCE OF RESPONSIVE FILING DEADLINES
AND SUBMISSION OF PROPOSED RULE 16 SCHEDULING ORDER**

Plaintiff County of Harris, Texas, and Defendants¹ (collectively, the “Parties”), pursuant to Paragraph 4 of Judge Miller’s Court Procedures, move for a continuance of the responsive filing deadlines associated with Plaintiff’s First Amended Complaint and the submission date of the Parties’ proposed Rule 16 Scheduling Order and respectfully state:

1. In light of the substantial disruptions created by the COVID-19 pandemic, the Parties have agreed to the following regarding service of Plaintiff’s First Amended Complaint, the responsive filing deadlines associated with the same, and the commencement of discovery in this action:

- a. Plaintiff’s First Amended Complaint, ECF No. 20, was filed on January 31, 2020, and includes claims under the Texas Deceptive Trade Practices Act (“DTPA”). TEX. BUS. & COMM. CODE §§ 17.41-.63.
- b. Counsel for Defendants accepted service of process of the First Amended Complaint on behalf of their respective clients without waiver of any defenses,

¹ Defendants are as follows: Eli Lilly and Company, Novo Nordisk, Inc., Sanofi-Aventis U.S., Express Scripts Holding Company, Express Scripts, Inc., ESI Mail Pharmacy Services, Inc., Express Scripts Pharmacy, Inc., CVS Health Corporation, Caremark Rx, LLC, Caremark LLC, Caremark Texas Mail Pharmacy, LLC, Optum, Inc., OptumRx Inc., Aetna Rx Home Delivery, LLC, and Aetna Pharmacy Management Services.

including those relating to personal jurisdiction and venue, and with the express reservation of the right to contest whether any party in the First Amended Complaint is properly named.

- c. Defendants' responsive filings to the First Amended Complaint, including answers and motions to dismiss filed under Federal Rule of Civil Procedure 12(b), will be due on April 14, 2020. This period will satisfy any abatement period under the DTPA.
- d. Instead of filing seven separate motions to dismiss, Defendants intend to file two separate motions to dismiss, one by the Manufacturing Defendants² and one by the PBM Defendants.³ Defendants have filed an unopposed motion with the Court for leave to exceed the 25-page limitation for those joint motions. *See* ECF No. 34.
- e. Plaintiff's response to Defendants' responsive filings will be due June 29, 2020.
- f. Defendants' replies in support of their responsive filings will be due July 29, 2020.
- g. Except as may be ordered by the Court, discovery in this action will be stayed pending resolution of any motions to dismiss filed by Defendants.

2. The Parties' proposed discovery stay renders impractical the meaningful completion of a proposed Discovery/Case Management Plan and a Scheduling/Docket Control Order by the March 27, 2020 deadline in the Court's Order of February 27, 2020, ECF No. 21. Accordingly, the Parties further request that the present deadline for the submission of both be vacated and that the submission deadline be the fourteenth day following the date on which the final order resolving the Defendants' forthcoming motions to dismiss is entered.

3. Good cause for entry of an Agreed Order consistent with the foregoing exists because it will assuage the various stresses occasioned by the COVID-19 pandemic and will facilitate an efficient and economical resolution of this action.

²The Manufacturing Defendants are Eli Lilly and Company, Novo Nordisk, Inc., and Sanofi-Aventis U.S.

³The Pharmacy Benefit Manager Defendants are Express Scripts Holding Company, Express Scripts, Inc., ESI Mail Pharmacy Services, Inc., Express Scripts Pharmacy, Inc., CVS Health Corporation, Caremark Rx, LLC, Caremark LLC, Caremark Texas Mail Pharmacy, LLC, Optum, Inc., OptumRx Inc., Aetna Rx Home Delivery, LLC, and Aetna Pharmacy Management Services.

WHEREFORE, premises considered, the Parties respectfully request that this motion be granted and that the Court sign and enter the proposed Agreed Order for Continuance which was filed concurrently herewith.

Respectfully submitted,

Dated: March 24, 2020

By: /s/ Earnest W. Wotring
Debra Tsuchiyama Baker
Texas Bar No. 15089600
Earnest W. Wotring
Texas Bar No. 22012400
John Muir
Texas Bar No. 14630477
David George
Texas Bar No. 00793212
BAKER • WOTRING LLP
700 JPMorgan Chase Tower
600 Travis Street
Houston, Texas 77002
Telephone: (713) 980-1700
Facsimile: (713) 980-1701
dbaker@bakerwotring.com
ewotring@bakerwotring.com
jmuir@bakerwotring.com
dgeorge@bakerwotring.com

Vince Ryan
Harris County Attorney
Texas Bar No. 17489500
Robert Soard
First Assistant Harris County Attorney
Texas Bar No. 18819100
Terence L. O'Rourke
Special Assistant Harris County Attorney
Texas Bar No. 15311000
Pegi S. Block
Assistant Harris County Attorney
Texas Bar No. 02498250
Suzanne Bradley
Assistant Harris County Attorney
Federal ID No. 24567
**OFFICE OF HARRIS COUNTY
ATTORNEY, VINCE RYAN**
Texas Bar No. 00793375
1019 Congress, 15th Floor
Houston, Texas 77002
Telephone: (713) 274-5121
Facsimile: (713) 437-4211
Vince.Ryan@cao.hctx.net
Robert.Soard@cao.hctx.net
Terence.ORourke@cao.hctx.net
Pegi.Block@cao.hctx.net
Suzanne.Bradley@cao.hctx.net

Richard Schechter Texas
Bar No. 17735500
**LAW OFFICE OF RICHARD
SCHECHTER, P.C.**
1 Greenway Plaza, Suite 740 Houston
TX 77046-0102
Telephone: 713-623-8919
Facsimile: 713-622-1680
richard@rs-law.com

Joanne Cicala
Texas Bar No. 24052632
Joshua T. Wackerly
Texas Bar No. 24093311
THE CICALA LAW FIRM PLLC
101 College Street
Dripping Springs, Texas 78620
Telephone: (512) 275-6550 Facsimile:
(512) 858-1801 joanne@cicalapllc.com
josh@cicalapllc.com

Christopher G. Hollins
Texas Bar No. 24090168
Aysia N. Mayo-Gray
Texas Bar No. 24109256
HOLLINS LAW GROUP PLLC
5832 Highway 6 North
Houston, Texas 77084

Telephone: 346.980.4600
Facsimile: 346.980.4610
c.hollins@hollinslawgroup.com
a.mayo-gray@hollinslawgroup.com

Attorneys for Plaintiff

By: /s/ Bryce L. Callahan
Bryce L. Callahan
Attorney-in-Charge
State Bar No. 24055248
S.D. Bar No. 680539
YETTER COLEMAN LLP
811 Main Street, Suite 4100
Houston, Texas 77002
Tel.: (713) 632-8000
Facsimile: (713) 632-8002
bcallahan@yettercoleman.com

Attorneys for Defendant
Eli Lilly and Company

Of Counsel:
Shankar Duraiswamy
Henry B. Liu
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, N.W.
Washington, DC 20001
Tel.: (202) 662-6000
Facsimile: (202) 662-6291
sduraiswamy@cov.com
hliu@cov.com

Attorneys for Defendant
Eli Lilly and Company

Of Counsel:
Neal Potischman
Andrew Yaphe
DAVIS POLK & WARDWELL LLP
1600 El Camino Real
Menlo Park, California 94025
Telephone: (650) 752-2021
Facsimile: (650) 752-2111
neal.potischman@davispolk.com

James P. Rouhandeh
David B. Toscano
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4835
Facsimile: (212) 701-5800
rouhandeh@davispolk.com

Attorneys for Defendant
Novo Nordisk Inc.

/s/ Randall L. Christian
Randall L. Christian
Attorney-in-Charge
State Bar No. 00783826
Southern District I.D. No. 15935
Susan E. Burnett
State Bar No. 20648050
Southern District I.D. No. 18604
BOWMAN AND BROOKE LLP
2901 Via Fortuna Drive, Suite 500
Austin, Texas 78745
Telephone: (512) 874-3811
Facsimile: (512) 874-3801
randall.christian@bowmanandbrooke.com
susan.burnett@bowmanandbrooke.com

Attorneys for Defendant
Novo Nordisk Inc.

Of Counsel:

Geoff Irwin
William D. Coglianese
JONES DAY
51 Louisiana Avenue NW
Washington, DC 20001
Tel.: (202) 879-3939
jmcevoy@jonesday.com
wcoglianese@jonesday.com

*Attorneys for Defendant
Sanofi-Aventis U.S. LLC*

Of Counsel:

Jason R. Scherr
Patrick A. Harvey
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004
Tel.: (202) 373-6000
Facsimile: (202) 373-6001
jr.scherr@morganlewis.com
patrick.harvey@morganlewis.com

R. Brendan Fee
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
Tel.: (215) 963-5000
Facsimile: (215) 963-5001
brendan.fee@morganlewis.com

*Attorneys for Defendants Express
Scripts Holding Company; Express
Scripts, Inc.; ESI Mail Pharmacy
Services, Inc.; and Express Scripts
Pharmacy, Inc.*

/s/ Joshua L. Fuchs

Joshua L. Fuchs
Attorney-in-Charge
Texas State Bar No. 24029559
S.D. Texas Bar No. 24029559
Alexander G. Hughes
Texas State Bar No. 24092546
S.D. Texas Bar No. 24092546
JONES DAY
717 Texas, Suite 3300
Houston, TX 77002
Tel.: (832) 239-3939
jlfuchs@jonesday.com
ahughes@jonesday.com

*Attorneys for Defendant
Sanofi-Aventis U.S. LLC*

/s/ Winstol D. Carter, Jr.

Winstol D. Carter, Jr.
Attorney-in-Charge
State Bar No. 03932950
S.D. Tex. No. 2934
MORGAN, LEWIS & BOCKIUS LLP
1000 Louisiana Street, Suite 4000
Houston, Texas 77002
Tel.: (713) 890-5000
Facsimile: (713) 890-5001
winn.carter@morganlewis.com

*Attorneys for Defendants Express
Scripts Holding Company; Express
Scripts, Inc.; ESI Mail Pharmacy
Services, Inc.; and Express Scripts
Pharmacy, Inc.*

Of Counsel:

Enu Mainigi

Daniel M. Dockery

WILLIAMS & CONNOLLY LLP

725 Twelfth Street, N.W.

Washington, DC 20005

Tel.: (202) 434-5000

Facsimile: (202) 434-5029

emainigi@wc.com

ddockery@wc.com

*Attorneys for CVS Health Corporation;
Caremark Rx, L.L.C.; Caremark, L.L.C.;
CaremarkPCS Health, L.L.C.; Caremark
Texas Mail Pharmacy, LLC; Aetna Rx Home
Delivery, LLC; and Aetna Pharmacy
Management Services, LLC*

Of Counsel:

Andrew Hatchett

ALSTON & BIRD LLP

1201 West Peachtree Street NW

Atlanta, GA 30309

Tel.: (404) 881-7000

Facsimile: (404) 881-7777

andrew.hatchett@alston.com

Brian D. Boone

Emily C. McGowan

ALSTON & BIRD LLP

101 South Tryon Street

Charlotte, NC 28280

Tel.: (704) 444-1000

/s/ Larry R. Veselka

Larry R. Veselka

Attorney-in-Charge

State Bar No. 20555400

S.D. Tex. No. 6797

Lee L. Kaplan

State Bar No. 11094400

S.D. Tex. No. 1840

SMYSER KAPLAN & VESELKA, L.L.P.

717 Texas Avenue, Suite 2800

Houston, Texas 77002-2761

Tel.: (713) 221-2300

Facsimile: (713) 221-2320

lkaplan@skv.com

lveselka@skv.com

*Attorneys for CVS Health Corporation;
Caremark Rx, L.L.C.; Caremark, L.L.C.;
CaremarkPCS Health, L.L.C.; Caremark
Texas Mail Pharmacy, LLC; Aetna Rx Home
Delivery, LLC; and Aetna Pharmacy
Management Services, LLC*

/s/ Justin E. VandenBout

Justin E. VandenBout

Attorney-in-Charge

State Bar No. 24060765

Federal Bar No. 912644

**CHAMBERLAIN, HRDLICKA, WHITE,
WILLIAMS & AUGHTRY**

1200 Smith Street, Ste. 1400

Houston, Texas 77002

Tel.: (713) 658-1818

Facsimile: (713) 658-2553

justin.vandenbout@chamberlainlaw.com

*Attorneys for Defendants Optum, Inc. and
OptumRx, Inc.*

Facsimile: (704) 444-1111
brian.boone@alston.com
emily.mcgowan@alston.com

John Snyder
ALSTON & BIRD LLP
950 F Street NW
Washington, DC 20004
Tel.: (202) 239-3300
Facsimile: (202) 239-3333
john.snyder@alston.com

*Attorneys for Defendants Optum, Inc. and
OptumRx, Inc.*

Certificate of Service

I certify that on this 24th day of March, 2020, the foregoing was served by email and/or by electronic filing service on all counsel of record.

/s/ Bryce L. Callahan

Bryce L. Callahan

Certificate of Conference

I certify that on the 24th day of March, 2020, the parties conferred and agreed that the foregoing motion should be filed and that the requested relief should be granted.

/s/ Bryce L. Callahan

Bryce L. Callahan